WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2006

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4015

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

Passed March 11, 2006

In Effect Ninety Days from Passage
AN ACT to amend and reenact §4-11A-2 and §4-11A-3 of the Code of West Virginia, 1931, as amended, to amend and reenact §11B-2-20 of said code; and to amend and reenact §33-20F-4 of said code; all relating generally to reserve funding; creating the Revenue Shortfall Reserve Fund – Part B; providing for the transfer of all monies in the West Virginia Tobacco Settlement Medical Trust Fund including any interest and earnings thereon to the Revenue Shortfall Reserve Fund - Part B; closing the West Virginia Tobacco Settlement Medical Trust Fund; providing funding for the Revenue Shortfall Reserve Fund; providing legislative authority to appropriate moneys from the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund - Part B; providing that repayments from the loan made to the physicians’ mutual insurance company shall be paid into the Revenue Shortfall Reserve Fund – Part B; providing for the
investment of moneys in the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §4-11A-2 and §4-11A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11B-2-20 of said code be amended and reenacted; and that §33-20F-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS.

§4-11A-2. Receipt of settlement funds and required deposit in West Virginia Tobacco Settlement Medical Trust Fund until the first day of June, two thousand five, then to Workers' Compensation Debt Reduction Fund; deposit of strategic compensation payments; transfer of trust fund moneys.

(a) The Legislature finds and declares that certain dedicated revenues should be preserved in trust for the purpose of stabilizing the state's health-related programs and delivery systems. It further finds and declares that these dedicated revenues should be preserved in trust for the purpose of educating the public about the health risks associated with tobacco usage and establishing a program designed to reduce and stop the use of tobacco by the citizens of this state and in particular by teenagers.

(b) There is hereby created a special account in the state treasury, designated the “West Virginia Tobacco Settlement Medical Trust Fund”, which shall be an interest-bearing
account and may be invested in the manner permitted by section nine, article six, chapter twelve of this code, with the interest income a proper credit to the fund. Unless contrary to federal law, fifty percent of all revenues received pursuant to the master settlement agreement shall be deposited in this fund. Funds paid into the account may also be derived from the following sources:

(1) All interest or return on investment accruing to the fund;

(2) Any gifts, grants, bequests, transfers or donations which may be received from any governmental entity or unit or any person, firm, foundation or corporation;

(3) Any appropriations by the Legislature which may be made for this purpose; and

(4) Any funds or accrued interest remaining in the Board of Risk and Insurance Management physicians' mutual insurance company account created pursuant to section seven, article twenty-f, chapter thirty-three of this code on or after the first day of July, two thousand four.

(c)(1) The moneys from the principal in the trust fund may not be expended for any purpose, except that on the first day of April, two thousand three, the treasurer shall transfer to the Board of Risk and Insurance Management physicians' mutual insurance company account created by section seven, article twenty-f, chapter thirty-three of this code, twenty-four million dollars from the West Virginia Tobacco Settlement Medical Trust Fund for use as the initial capital and surplus of the physicians’ mutual insurance company created pursuant to said article. The remaining moneys in the trust fund resulting from interest earned on the moneys in the fund and the return on investments of the moneys in the fund shall be available only upon appropriation by the Legislature as part of the state budget.
and expended in accordance with the provisions of section three of this article.

(2) Notwithstanding any other provision of this code to the contrary, on the effective date of the amendment and reenactment of this section during the regular session of the Legislature in two thousand six, all moneys in the trust fund and any interest or other return earned thereon shall be transferred to the Revenue Shortfall Reserve Fund – Part B created in section twenty, article two, chapter eleven-b of this code and the trust fund shall be closed. No provisions of the amendments made to this section during the regular session of the Legislature in two thousand six may be construed to change the requirements of this section for the deposit of revenues received pursuant to the tobacco master settlement agreement into the workers’ compensation debt reduction fund.

(d) Notwithstanding the preceding subsections to the contrary, the first thirty million dollars of all revenues received after the thirtieth day of June, two thousand five, pursuant to section IX(c)(1) of the tobacco master settlement agreement shall in the fiscal year beginning the first day of July, two thousand five, and each fiscal year thereafter, be deposited in the workers’ compensation debt reduction fund established in the state treasury in section five, article two-d, chapter twenty-three of this code. Receipts in excess of thirty million dollars shall be deposited into the Tobacco Settlement Fund provided in section three of this article.

(e) Notwithstanding anything in this code to the contrary, strategic compensation payments received pursuant to section IX(c)(2) of the tobacco master settlement agreement, beginning in two thousand eight, shall be deposited in their entirety in the workers’ compensation debt reduction fund.
§4-11A-3. Receipt of settlement funds and required deposit in the West Virginia Tobacco Settlement Fund.

(a) There is hereby created in the state treasury a special revenue account, designated the “Tobacco Settlement Fund”, which shall be an interest bearing account and may be invested in the manner permitted by the provisions of article six, chapter twelve of this code, with the interest income a proper credit to the fund. Unless contrary to federal law, fifty percent of all revenues received pursuant to the master settlement agreement shall be deposited in this fund. These funds shall be available only upon appropriation by the Legislature as part of the state budget: Provided. That for the fiscal year two thousand, the first five million dollars received into the fund shall be transferred to the public employees insurance reserve fund created in article two, chapter five-a of this code.

(b) Appropriations from the Tobacco Settlement Fund are limited to expenditures for the following purposes:

(1) Reserve funds for continued support of the programs offered by the Public Employees Insurance Agency established in article sixteen, chapter five of this code;

(2) Funding for expansion of the federal-state medicaid program as authorized by the Legislature or mandated by the federal government;

(3) Funding for public health programs, services and agencies; and

(4) Funding for any state owned or operated health facilities.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.
§11B-2-20. Reduction of appropriations; powers of Governor; Revenue Shortfall Reserve Fund and permissible expenditures therefrom.

(a) Notwithstanding any provision of this section, the Governor may reduce appropriations according to any of the methods set forth in sections twenty-one and twenty-two of this article. The Governor may, in lieu of imposing a reduction in appropriations, request an appropriation by the Legislature from the Revenue Shortfall Reserve Fund established in this section.

(b) A Revenue Shortfall Reserve Fund is hereby continued within the State Treasury. The Revenue Shortfall Reserve Fund shall be funded as set forth in this subsection from surplus revenues, if any, in the State Fund, General Revenue, as the surplus revenues may accrue from time to time. Within sixty days of the end of each fiscal year, the secretary shall cause to be deposited into the Revenue Shortfall Reserve Fund the first fifty percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended. The Revenue Shortfall Reserve Fund shall be funded continuously and on a revolving basis in accordance with this subsection up to an aggregate amount not to exceed ten percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended. If at the end of any fiscal year the Revenue Shortfall Reserve Fund is funded at an amount equal to or exceeding ten percent of the State’s General Revenue Fund budget for the fiscal year just ended, then there shall be no further obligation of the secretary under the provisions of this section to apply any surplus revenues as set forth in this subsection until that time the Revenue Shortfall Reserve Fund balance is less than ten percent of the total appropriations from the state fund, general revenue.

(c) Not earlier than the first day of November of each calendar year, if the state’s fiscal circumstances are such as to
otherwise trigger the authority of the Governor to reduce appropriations under this section or section twenty-one or section twenty-two of this article, then in that event the Governor may notify the presiding officers of both houses of the Legislature in writing of his or her intention to convene the Legislature pursuant to section nineteen, article VI of the Constitution of West Virginia for the purpose of requesting the introduction of a supplementary appropriation bill or to request a supplementary appropriation bill at the next preceding regular session of the Legislature to draw money from the surplus Revenue Shortfall Reserve Fund to meet any anticipated revenue shortfall. If the Legislature fails to enact a supplementary appropriation from the Revenue Shortfall Reserve Fund during any special legislative session called for the purposes set forth in this section or during the next preceding regular session of the Legislature, then the Governor may proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article. Should any amount drawn from the Revenue Shortfall Reserve Fund pursuant to an appropriation made by the Legislature prove insufficient to address any anticipated shortfall, then the Governor may also proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article.

(d) Upon the creation of the fund, the Legislature is authorized and may make an appropriation from the Revenue Shortfall Reserve Fund for revenue shortfalls, for emergency revenue needs caused by acts of God or natural disasters or for other fiscal needs as determined solely by the Legislature.

(e) Prior to the thirty-first day of October, in any fiscal year in which revenues are inadequate to make timely payments of the state’s obligations, the Governor may by executive order, after first notifying the presiding officers of both houses of the Legislature in writing, borrow funds from the Revenue Shortfall Reserve Fund. The amount of funds borrowed under this
subsection shall not exceed one and one-half percent of the
general revenue estimate for the fiscal year in which the funds
are to be borrowed, or the amount the Governor determines is
necessary to make timely payment of the state's obligations,
whichever is less. Any funds borrowed pursuant to this subsec-
tion shall be repaid, without interest, and redeposited to the
credit of the Revenue Shortfall Reserve Fund within ninety days
of their withdrawal.

(f) There is hereby created in the State Treasury the
“Revenue Shortfall Reserve Fund – Part B.” The Revenue
Shortfall Reserve Fund – Part B shall consist of moneys
transferred from the West Virginia Tobacco Settlement Medical
Trust Fund pursuant to the provisions of section two, article
eleven-a, chapter four of this code, repayments made of the loan
from the West Virginia Tobacco Settlement Medical Trust Fund
to the physician’s mutual insurance company pursuant to the
provisions of article twenty-f, chapter thirty-three of this code,
and all interest and other return earned on the moneys in the
Revenue Shortfall Reserve Fund – Part B. Moneys in the
Revenue Shortfall Reserve Fund – Part B may be expended
solely for the purposes set forth in subsection (d) of this section,
subject to the following conditions:

(1) No moneys in the Revenue Shortfall Reserve Fund –
Part B nor any interest or other return earned thereon may be
expended for any purpose unless all moneys in the Revenue
Shortfall Reserve Fund described in subsection (b) of this
section have first been expended, except that the interest or
other return earned on moneys in the Revenue Shortfall Reserve
Fund – Part B may be expended as provided in subdivision (2)
of this subsection; and

(2) Notwithstanding any other provision of this section to
the contrary, the Legislature may appropriate any interest and
other return earned thereon that may accrue on the moneys in
the Revenue Shortfall Reserve Fund – Part B after the thirtieth
day of June, two thousand twenty-five, for expenditure for the
purposes set forth in section three, article eleven-a, chapter four
of this code; and

(3) Any appropriation made from Revenue Shortfall
Reserve Fund – Part B shall be made only in instances of
revenue shortfalls or fiscal emergencies of an extraordinary
nature.

(g) Subject to the conditions upon expenditures from the
Revenue Shortfall Reserve Fund – Part B prescribed in subsec-
tion (f) of this section, in appropriating moneys pursuant to the
provisions of this section, the Legislature may in any fiscal year
appropriate from the Revenue Shortfall Reserve Fund and the
Revenue Shortfall Reserve Fund – Part B a total amount up to
but not exceeding ten percent of the total appropriations from
the State Fund, General Revenue, for the fiscal year just ended.

(h)(1) Of the moneys in the Revenue Shortfall Reserve
Fund, one hundred million dollars, or such greater amount as
may be certified as necessary by the director of the budget for
the purposes of subsection (e) of this section, shall be made
available to the West Virginia Board of Treasury Investments
for management and investment of the moneys in accordance
with the provisions of article six-c, chapter twelve of this code.
All other moneys in the Revenue Shortfall Reserve Fund shall
be made available to the West Virginia Investment Manage-
ment Board for management and investment of the moneys in
accordance with the provisions of article six, chapter twelve of
this code. Any balance of the Revenue Shortfall Reserve Fund
including accrued interest and other return earned thereon at the
end of any fiscal year shall not revert to the general fund but
shall remain in the Revenue Shortfall Reserve Fund for the
purposes set forth in this section.
(2) All of the moneys in the Revenue Shortfall Reserve Fund – Part B shall be made available to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of article six, chapter twelve of this code. Any balance of the Revenue Shortfall Reserve Fund – Part B including accrued interest and other return earned thereon at the end of any fiscal year shall not revert to the general fund but shall remain in the Revenue Shortfall Reserve Fund – Part B for the purposes set forth in this section.

CHAPTER 33. INSURANCE.

ARTICLE 20F. PHYSICIANS’ MUTUAL INSURANCE COMPANY.

§33-20F-4. Authorization for creation of company; requirements and limitations; repayment of loan.

(a) Subject to the provisions of this article, a physicians’ mutual insurance company may be created as a domestic, private, nonstock, nonprofit corporation. As an incentive for its creation, the company may be eligible for funds from the Legislature in accordance with the provisions of section seven of this article. The company must remain for the duration of its existence a domestic mutual insurance company owned by its policyholders and may not be converted into a stock corporation, a for-profit corporation or any other entity not owned by its policyholders. The company may not declare any dividend to its policyholders; sell, assign or transfer substantial assets of the company; or write coverage outside this state, except for counties adjoining this state, until after any and all debts owed by the company to the state have been fully paid.

(b) For the duration of its existence, the company is not and may not be considered a department, unit, agency, or instrumentality of the state for any purpose. All debts, claims,
obligations, and liabilities of the company, whenever incurred, shall be the debts, claims, obligations, and liabilities of the company only and not of the state or of any department, unit, agency, instrumentality, officer, or employee of the state.

(c) The moneys of the company are not and may not be considered part of the general revenue fund of the state. The debts, claims, obligations, and liabilities of the company are not and may not be considered a debt of the state or a pledge of the credit of the state.

(d) The company is not subject to provisions of article nine-a, chapter six of this code or the provisions of article one, chapter twenty-nine-b of this code.

(e)(1) All premiums collected by the company are subject to the premium taxes, additional premium taxes, additional fire and casualty insurance premium taxes and surcharges contained in sections fourteen, fourteen-a, fourteen-d and thirty-three, article three of this chapter: Provided, That while the loan to the company of moneys from the West Virginia Tobacco Settlement Medical Trust Fund pursuant to section nine of this article remains outstanding, the commissioner may waive the company's premium taxes, additional premium taxes and additional fire and casualty insurance premium taxes if payment would render the company insolvent or otherwise financially impaired.

(2) On and after the first day of July, two thousand three, any premium taxes and additional premium taxes paid by the company and by any insurer on its medical malpractice line pursuant to sections fourteen and fourteen-a, article three of this chapter, shall be temporarily applied toward replenishing the moneys appropriated from the West Virginia Tobacco Settlement Medical Trust Fund pursuant to subsection (c), section two, article eleven-a, chapter four of this code pending repayment of the loan of such moneys by the company.
(3) The State Treasurer shall notify the commissioner when the moneys appropriated from the West Virginia tobacco settlement medical trust have been fully replenished, at which time the commissioner shall resume depositing premium taxes and additional premium taxes diverted pursuant to subdivision (2) of this subsection in accordance with the provisions of sections fourteen and fourteen-a, article three of this chapter.

(4) Payments received by the treasurer from the company in repayment of any outstanding loan made pursuant to section nine of this article shall be deposited in the West Virginia Tobacco Settlement Medical Trust Fund and dedicated to replenishing the moneys appropriated therefrom under subsection (c), section two, article eleven-a, chapter four of this code. Once the moneys appropriated from the West Virginia Tobacco Settlement Medical Trust Fund have been fully replenished, the treasurer shall deposit any payments from the company in repayment of any outstanding loan made pursuant to section nine of this article in said fund and transfer a like amount from said fund to the commissioner for disbursement in accordance with the provisions of sections fourteen and fourteen-a, article three of this chapter.

(5) Notwithstanding any other provision of this code to the contrary, on and after the effective date of the amendment and reenactment of this section during the regular session of the Legislature in two thousand six, all moneys otherwise required by this section to be deposited in the West Virginia Tobacco Settlement Medical Trust Fund and dedicated to replenishing the moneys transferred therefrom under subsection (c), section two, article eleven-a, chapter four of this code shall instead be paid into the Revenue Shortfall Reserve Fund – Part B created in section twenty, article two, chapter eleven-b of this code.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 31st day of March, 2006.

Governor